No. [redacted]48

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

v.

PAUL SACKS.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF THE UNITED STATES.

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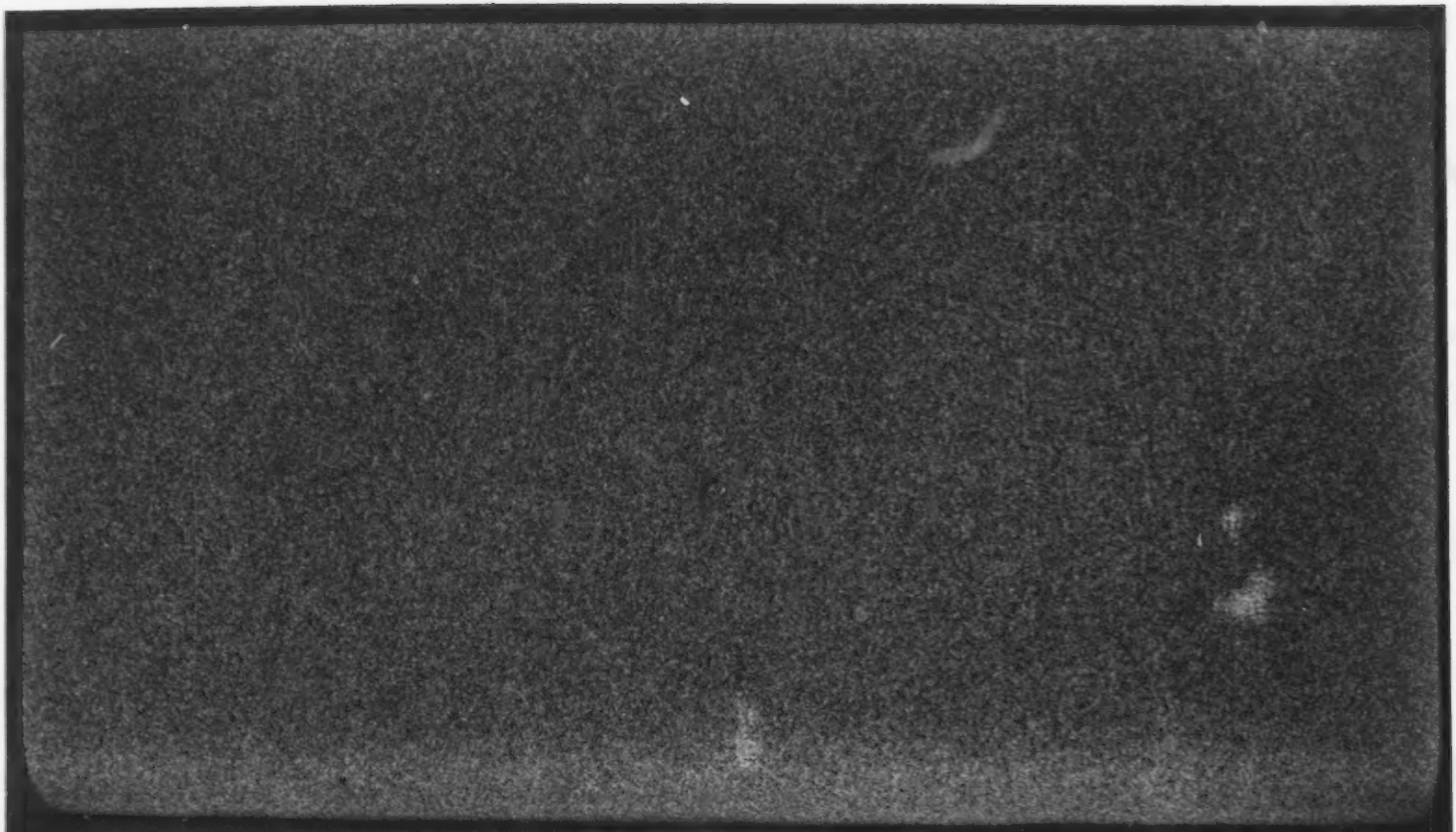

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES OF AMERICA, plaintiff in error,
v.
PAUL SACKS. } No. 330.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT OF CASE.

The defendant in error, hereinafter called the defendant, was indicted in the Southern District of New York on three counts. (R. 1–11.) The first two counts charged a violation of section 148 of the Criminal Code of the United States in that the defendant, with intent to defraud, did alter an obligation of the United States, to wit, a war-savings certificate of the United States, specifically described in the counts, of which a copy was attached as an exhibit to the counts. The third count charged a violation of section 151 of the Criminal Code of the United States in that the defendant, with intent to defraud, did have in his possession an altered

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obligation of the United States, to wit, a portion of a war-savings certificate of the United States of the series of 1918, with three war-savings stamps thereto attached, with intent to sell the same; and that the said obligation of the United States was altered in that the portion thereof which the defendant had in his possession had been torn from a whole war-savings certificate. A copy of the altered obligation in question was attached as an exhibit to the count.

A motion to quash the indictment was granted, and a demurrer thereto sustained (R. 11–10), "because the indictment is not authorized under any construction of the act of Congress upon which it is alleged to be predicated, to wit, the act of Congress of September 24, 1917, section 6, and as amended by the act of Congress of September 24, 1918, section 2 thereof, and sections 148 and 151 of the Criminal Code of the United States, or under the construction of any other statute of the United States now in force." (R. 19.)

The District Judge rendered only one opinion to cover both the case at bar and the case of *United States* v. *Herman Janowitz et al.*, No. 331, on the docket of the October term, 1920, of this court.

Whereupon this writ of error was allowed under the provisions of the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246.

ARGUMENT.

(*a*) In so far as the first and second counts of the indictment in the case at bar are concerned, it is not believed that anything more need be said than is contained in the brief on behalf of the United States in the aforesaid case of *United States* v. *Herman Janowitz et al.*, No. 331, on the docket of the October term, 1920, of this court. The second count in the Janowitz case charged a conspiracy to violate section 148 of the Criminal Code, while the first two counts in the case at bar merely charge a substantive violation of said section 148. This court, of course, will take judicial notice of the regulations issued by the Secretary of the Treasury relative to the issuance and redemption of war savings certificates and stamps (*Caha* v. *United States*, 152 U. S. 211, 221, 222), and, as argued in the brief on behalf of the Government in the Janowitz case, those regulations properly interpreted and enforced make the war savings certificate with the stamp attached thereto the obligation of the United States, and therefore to remove the stamp from the certificate is necessarily to alter said obligation.

(*b*) In so far as the third count is concerned, this also seems to be covered by the argument on behalf of the United States in the Janowitz case, and the District Judge treated the matter in this way. If the obligation of the United States, within the meaning of section 151 of the Criminal Code, was the complete war savings certificate with a stamp or stamps thereto

attached, and if the defendant had in his possession such a paper as Exhibit C which consists of that part of a war-savings certificate having stamps attached thereto which does not contain the name of the owner or the receipt to be executed by the owner when the certificate is redeemed, then he had in his possession an altered obligation of the United States, within the meaning of section 151 of the Criminal Code, and the third count expressly alleges that he had this possession, with intent to defraud the United States, and with intent to pass and sell the altered obligation in question.

CONCLUSION.

The judgment of the District Court should be reversed and the case remanded with instructions to deny the motion and overrule the demurrer.

ROBERT P. STEWART,
Assistant Attorney General.
WILLIAM C. HERRON,
Attorney.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1920—No. 3[illegible]48

THE UNITED STATES OF AMERICA,
Plaintiff-in-Error,

—against—

PAUL SACKS,
Defendant-in-Error.

In Error to the District Court of the United States for the Southern District of New York.

BRIEF ON BEHALF OF PAUL SACKS, DEFENDANT-IN-ERROR.

JOSEPH A. SEIDMAN,
Attorney for Defendant in Error.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1920—No. 330.

THE UNITED STATES OF AMERICA,
Plaintiff-in-Error,

—against—

PAUL SACKS,
Defendant-in-Error.

In Error to the District Court of the United States for the Southern District of New York.

BRIEF ON BEHALF OF PAUL SACKS, DEFENDANT-IN-ERROR.

The defendant in error, hereinafter called defendant, was indicted in the Southern District of New York on three counts (R. 11).

When called for trial said indictment was on defendant's motion quashed on the ground that upon proper construction of Section 6 of the Act of Congress of September 24, 1917, as amended, and Sections 148 and 151 of the Criminal Code of the United States, the defendant cannot be guilty of crime (R. 18).

The first two counts of the indictment are alike in character differing only in names appearing on war-savings certificate attached to indict-

ment, and in each of these counts the defendant is charged that he

> "did, with intent to defraud, alter an obligation of the United States, to wit, a War Savings Certificate of the United States of the Series of 1918 * * * in that the said defendant did then and there tear from the face of said War Savings Certificate two War Savings Certificate Stamps of the United States of the Series of 1918, thereto before attached."

The alleged obligation of the United States referred to in said indictment is thereto attached marked respectively Exhibits 'A' and 'B' and it is further charged that the act complained of, namely, the alteration, was in violation of Section 148 of the United States Criminal Code, reading as follows:

> "Whoever, with intent to defraud, shall falsely make, forge, counterfeit or alter any obligation or other security of the United States, shall be fined not more than Five thousand dollars and imprisoned not more than fifteen years."

The third count charges the defendant with keeping in his possession

> "with intent to *defraud* the United States and with intent to *pass and sell* the same, an *altered obligation of the United States,* to wit, a portion of a War Savings Certificate of the United States of the Series of 1918 with three War Savings Stamps

> thereto attached; that the said obligation of the United States was altered in that portion thereof, which the defendant did have and keep in his possession, had been torn from a whole War Savings Certificate; that the altered obligation of the United States which the defendant did have and keep in his possession is marked Exhibit "C" attached hereto and made part of this indictment."

It is charged that these acts were in violation of Section 151 of the United States Criminal Code, reading as follows:

> "Whoever, with intent to *defraud*, shall *pass*, utter, publish or *sell* or *attempt to pass*, utter, publish or *sell*, or shall bring into the United States or any place subject to the jurisdiction thereof, with *intent to pass*, publish, utter or *sell*, or shall *keep in possession* or concealed with like intent, any falsely made, forged, counterfeited or *altered obligation* or other security of the United States, shall be fined not more than Five thousand dollars and imprisoned not more than fifteen years."

The words "obligation or other security of the United States" are defined by Section 147 of the United States Criminal Code as follows:

> "The words 'obligation or other security of the United States' shall be held to mean all bonds, certificates of indebtedness, national bank currency, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or

> drafts for money, drawn by or upon authorized officers of the United States, stamps and *other representatives of value*, of whatever denomination, which have been or may be issued under any act of Congress.'

The heading to Section 151 of the said Criminal Code is:

"UTTERING FORGED OBLIGATIONS."

The heading to Section 154 of the United States Criminal Code is:

> "DEALING IN COUNTERFEIT SECURITIES."

Section 154 of the Criminal Code reads as follows:

> "Whoever shall buy, sell, exchange, transfer, receive, or deliver any false, forged, counterfeited or altered obligation or other security of the United States, * * * with the intent that the same be passed, published, or used as true and genuine, shall be fined not more than Five thousand Dollars or imprisoned not more than ten years, or both."

The Act of Congress, September 24th, 1917 (Chap. 56, Section 40 Stat. 291, Section 6829 l. of U. S. Compiled Statutes, 1918) reads as follows:

> "In addition to the bonds authorized by Section 1 of this Act and the certificate of indebtedness authorized by Section 5

of this Act, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor, at such price or prices and upon such terms and conditions as he may determine, *War Savings Certificates* of the United States on which interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe. Such War Saving Certificates shall be in such form or forms and subject to such terms and conditions, and may have such provisions for the payment thereof before maturity, as the Secretary of the Treasury may prescribe. Each War Saving Certificate so issued shall be payable at such time, not exceeding five years from the date of its issue, and may be redeemable before maturity and upon such terms and conditions as the Secretary of the Treasury may prescribe. The sum of such War Saving Certificates outstanding shall not at any one time exceed in the aggregate two billion. The amount of War Saving Certificates sold to any one person at any one time shall not exceed one hundred dollars and it shall not be lawful for any one person at any one time to hold War Saving Certificates to an aggregate amount exceeding one thousand dollars. The Secretary of the Treasury may, under such regulations and upon such terms and conditions as he may prescribe, issue or cause to be issued, stamps to evidence payment for or on account of such certificates."

The Secretary of the Treasury issued:

A. Cards in the form of Exhibits "A" and "B" named by him "United States of America War Savings Certificate," upon which, among other things, he caused to be printed:

CERTIFICATE

This certifies that, subject to the terms and conditions printed hereon, the owner named on the back hereof will be entitled to receive on January 1, 1923, in respect of each United States War Savings Certificate Stamp of the Series of 1918 then affixed hereto, the amount indicated thereon as then payable, or, at his option, will be entitled to receive at any earlier date, in respect of each such Stamp then affixed hereto, the lesser amount indicated in the Table printed hereon.
January 2, 1918.

(Signed) W. G. McAdoo,
Secretary of Treasury.

TERMS AND CONDITIONS

1. This certificate is not a valid obligation unless a United States War-Savings Certificate Stamp of the Series of 1918 is affixed hereto.

2. This certificate is of no value except to the owner named hereon, and is not transferable.

3. Not more than twenty United States War-Savings Certificate Stamps, and only such Stamps of the Series of 1918, may be affixed hereto.

(4 and 5 irrelevant to this issue)

6. The law provides that no one person shall at any one time hold War-Savings Certificates to an aggregate amount exceeding One Thousand Dollars."

B. Stamps in the form of the stamps on Exhibit "C" contained printed words as follows:

"United States War Savings Certificate Stamp, when affixed to a certificate 5 Dollars will be payable January 1, 1923."

Questions Involved.

1. Is the card called "War Savings Certificate" without a "War Savings Certificate Stamp" an obligation of the United States?

2. Is a "War Savings Certificate Stamp" not affixed to a card called "War Savings Certificate" an obligation of the United States?

3. Is the act of detaching the stamp from the "certificate" not changing the form of the obligation as to the amount payable, the time of payment, or the name of the payee, an alteration within the meaning of the Counterfeiting Statute?

4. Has Congress or the Secretary of the Treasury created any restriction preventing the free

transfer and disposition of the "War Savings Certificate Stamp" after its sale by the Treasury Department?

5. Are the acts described in the indictment offenses or crimes and the subject of criminal prosecution under Sections 148 and 151 of the United States Criminal Code?

ARGUMENT.

I.

The allegations contained in the various counts of the indictment are insufficient to charge the defendant with the commission of a substantive offense.

To constitute an offense or crime and be the subject of criminal prosecution in a Federal court there must be some proof of the commission of some act or the omission of some duty which is in violation of a public law of the United States, either prohibiting or commanding it.

> *Todd* v. *United States*, 158 U. S. 278; *United States* v. *Hudson*, 7 Cranch, 32; *United States* v. *Cooledge*, 1 Wheat, 145.

The counterfeiting statutes were designed to suppress an evil—the counterfeiting of currency by imitation or alteration detrimental to the interest of the Government. Its primary purpose was to prevent the utterance and passing of spurious bills, bonds or stamps, and the alteration of genuine documents by changing the form of the obligation— by changing a one dollar bill to a ten dollar bill, or a bond for $100 to $1,000, and alterations of like character. It was not the purpose of Congress to control the action of those in lawful possession of genuine Government obligations so as to prohibit destruction of such obligations by the owner.

The Attorney General insists that the Court should take into consideration what was in the mind of the Secretary of the Treasury when he promulgated the rules and prescribed the terms and conditions printed on the card described as "War Savings Certificate," which came into existence many years after the enactment of the counterfeiting statute; he insists that the rules so promulgated be read into the counterfeiting statute so as to make criminal the commission of an act amounting to a destruction of a govern-

ment obligation, when the act effecting its destruction is committed by the lawful owner thereof.

Mr. Judge Hough, following settled rules of law declared by this Court in numerous cases involving the construction of penal statutes, refused to declare in favor of constructive offenses and held that the counterfeit statutes are not to be extended by construction so as to cover this case, where it is admitted that the defendant did not come into possession of the cards or stamps without the consent or permission of the person or persons who acquired good title thereto and paid full consideration therefor to the United States Government.

In *United States* v. *Chase* (135 U. S. 255, 261) Mr. Justice Lamar, speaking for a unanimous Court, said:

> "We recognize the value of the rule construing statutes with reference to the evil they were designed to suppress as an important aid in ascertaining the meaning of the language in them which is ambiguous and equally susceptible of conflicting constructions. But this Court has repeatedly held that this rule does not apply to instances which are not embraced in the language employed in the statute, or implied from a fair interpretation of its contents, even though they may involve the same mischief which the statute was designed to suppress."

In *U. S.* v. *Clayton*, 2 Dill., 219, Fed. Cas. No. 14,814, Judge Dillon said:

> "*The principle that the legislative intent is to be found, if possible, in the enactment itself, and that the statutes are not to be extended by construction to cases not fairly and clearly in their terms is one of great importance to the citizen. The courts have no power to create offenses, but, if by a latitudinarian construction, they construe cases not provided for to be within legislative enactments, it is manifest that the safety and liberty of the citizen are put in peril, and that the legislative domain had been invaded.* Of course, an enactment is not to be frittered away by forced construction, by metaphysical niceties, of mere verbal and sharp criticism. *Nevertheless, the doctrine is fundamental in English and American law that there can be no constructive offenses, that before a man can be punished his case must be plainly within the statute, and if there be any fair doubt whether the statute embraces it, that doubt is to be resolved in favor of the accused.* These principles of law admit of no dispute, and have been often declared by the highest courts, and by no tribunal more clearly than the Supreme Court of the U. S. *U. S.* v. *Morris*, 14 Pet. (39 U. S.) 464; *U. S.* v. *Wiltberger*, 5 Wheat. (18 U. S.) 76; *U. S.* v. *Sheldon*, 2 Wheat. (15 U. S.) 119."

In *U. S.* v. *Wiltberger*, 5 Wheat., 76, 95, 96, it was said by Chief Justice Marshall:

> "The rule that penal laws are to be construed strictly is perhaps not much less

> old than construction itself. * * * *to determine that a case is within the intention of the statute, its language must authorize us to say so. It would be dangerous indeed, to carry the principle that a case which is within the reason or mischief of the statute is within its provisions so far as to punish a crime not enumerated in the statute, because it is of equal atrocity or of kindred character with those which are enumerated.*"

In *France* v. *U. S.*, 164 U. S., 676, it is said:

> "*The statute does not cover the transaction, and however reprehensible the plaintiffs in error may be thought to be, we cannot sustain a conviction on that ground.* Although the objection is a narrow one, yet the statute being highly penal, rendering its violator liable to fine and imprisonment, we are compelled to construe it strictly * * * *if it be urged that the act of these plaintiffs in error is within the reason of the statute, the answer must be that it is so far outside of its language that to include it within the statute would be to legislate, and not to construe legislation.*"

See also:

> *United States* v. *Salen*, 235 U. S. 237.

It is elementary that there can be no conviction upon proof of mere general malice or criminal intent, but that to sustain a conviction the indictment must allege, and there must be some evidence to prove, an intent to accomplish

a particular purpose. There is nothing in the indictment to show the purpose intended to be accomplished. The United States received full value for the stamps; its liability thereon was fixed when the stamp came into defendant's possession; the government's liability, if any, remained the same no matter how many times the stamp changed hands; the owner of the stamp could affix it to or remove it from the card without changing the obligation of the United States. The rights of the United States were in no wise prejudiced. The definition to be given the word "alteration" is no different in the case of a Government obligation than the alteration of a private obligation. If the alteration does not prejudice the rights of the obligor, the act of alteration will not constitute a crime at common law.

> *People* v. *Cady*, 6 Hill (N. Y.) 490;
> *People* v. *Shall*, 9 Cow. (N. Y.) 778;
> *People* v. *Harrison*, 8 Barb. (N. Y.) 560.

The word "alter" as used in the counterfeiting statute means an act causing a change in the form of the obligation without destroying its

identity. It does not mean its total destruction. In other words, in order to make the alteration of a War Savings Certificate an offense within the meaning of the statute, the certificate as altered must retain the character and form of an obligation of the United States changed only as to the government's liability thereon, or as to the time for the payment thereof, as in the case of the alteration of any written instrument. A dollar bill, when cut to pieces, is not an altered obligation of the United States and one would not be guilty of altering government bonds by the complete obliteration of all words printed thereon. The obliteration of the words creating the obligation effects the complete destruction of the instrument and changes it to a mere piece of paper.

> "Nothing which ceases to exist can, in any proper sense, be said to be altered. If it is altered, it has merely changed its form or nature, but still has existence."
>
> *Haynes* v. *State*, 15 Ohio State Rep. 455, 458.

and see to the same effect

> *Hannibal* v. *Winchel*, 54 Mo. 172, 177;
> *Waddell* v. *New York*, 8 Barb. (N. Y.) 95, 96.

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In *Davis* v. *Campbell* (93 Iowa, 524, 530), citing Black Law Dictionary, alteration is defined to be an act upon a written instrument, which without destroying its identity, changes its language and meaning. In another case it has been said:

> "An alteration of an instrument is something by which its meaning or language is changed, either in a material or an immaterial part. If what is written upon or erased from the paper containing the instrument, have no tendency to produce this result or to mislead any person, it cannot be said to be an alteration" (*Morril* v. *Otis*, 12 N. H. 466, 472).

As stated by Mr. Judge C. M. Hough in his opinion and as was conceded upon the argument, that which is called a War Savings Certificate is a mere piece of pasteboard of no value whatsoever. These certificates are freely distributed upon the purchase of one War Savings Stamp.

The Treasury Department Circular 94 declares that a War Savings Certificate of the Series of 1918 "will be an obligation of the United States when and only when" at least one stamp is affixed thereto; but the Secretary of the Treasury "offers for sale" War Savings Certificates, payments for or on account of which "must be

evidenced by" stamps which "are to be affixed thereto." It is declared that no certificate will be issued unless at least one stamp shall at the same time be purchased and affixed thereto, but "no additional charge" is made for the certificate itself. It is required that the name of the owner of each certificate must be written thereupon "at the time of the issue thereof." It is then declared that "War Savings Certificates are not transferable and will be payable only to the respective owners' names thereon."

Circular 108 which is formally entitled as Treasury Regulations also provides that if any person receive certificates in excess of an aggregate of one thousand dollars maturity value in an unlawful manner, the excess amount shall be immediately surrendered at a money order post-office and be paid for at their then value: but "in any other case if it shall appear at the time a certificate is presented for payment that the person presenting the same holds certificates of an aggregate amount exceeding one thousand dollars maturity value, the post-master shall refuse payment of all certificates in excess of such

amount and shall demand surrender of the certificates held by such owner until the holdings of such owner are reduced to one thousand dollars maturity value."

Assuming, without conceding, that the Secretary of the Treasury was authorized by Congress to annex these terms and conditions to the sale and disposition of War Savings Certificates and War Savings Certificate Stamps, the destruction of either one of the certificates would not constitute an act amounting to the alteration of an obligation of the United States because the piece of pasteboard called "War Savings Certificate" in itself creates no obligation without the stamp being attached thereto, and again, the War Savings Certificate Stamp itself without being attached to the Certificate would not under these terms and conditions amount to an obligation of the United States. So that, if it be assumed that the defendant did tear the stamps from the Certificate and retained the possession of the stamps without the Certificate, it could not be said that this act alone was an offense under the counterfeiting statute. By tearing the Certificate if it was an obligation

of the United States, the defendant merely accomplished its complete destruction and so by removing the stamp from the Certificate he also accomplished nothing less than a complete destruction of the obligation.

To construe this enabling statute as a delegation of power to legislate, would be contrary to the express provisions of the Constitution. In effect such a construction would vest in the Secretary of the Treasury a power to create regulations in the nature of an amendment to the statute authorizing the issue of the stamps and certificates under consideration. To sustain the contentions of the Attorney General this Court must overrule its prior decisions in *Morril* v. *Jones*, 106 U. S. 266; *U. S.* v *Williamson*, 207 U. S. 425, and other cases.

II.

In the absence of express language in the Statute which authorized the issue of War Savings Certificates and War Savings Certificate Stamps, prohibiting the free transfer and disposition of certificates and stamps, the Treasury Department was without power to impose restrictions upon the transfer of either certificates or stamps.

In *Adams* v. *Church* (193 U. S. 510) it was contended that under the Timber Culture Act (Section 2, Stat. at Large 113, Chap. 190) the provisions of that law enacted that a public policy to grant the lands in question to the person filing the entry, his heirs and legal representatives and none other, and that therefore a sale of an interest in the lands to another as partner was void as against public policy. Mr. Justice Day delivered the opinion of this Court and after referring to these contentions and to the statute and the Homestead Act (U. S. Revised Stat. Section 2290) said:

> "But this case is very far from supporting the contention of the plaintiff in error as to the construction of the timber

culture act. There is no requirement in the latter act that the entryman shall make oath that he has not alienated any interest in the land. The policy of the government to require such affidavit when it intends to make it a condition precedent to granting a title was indicated in the homestead act, and could readily have been pursued by a similar provision in the timber culture act if it was intended to extend the principle to that statute. The final proof under the latter act has in view sworn testimony that the number of trees required has been planted and the prairies theretofore barren of timber have been supplied with trees to the extent required by the law before the title shall pass from the government. * * * But as the law does not require affidavit before final certificate that no interest in the land has been sold, we perceive no reason why such contract as was found to exist by the Supreme Court of Oregon would vitiate the agreement to convey after the certificate is granted and the patent issued. * * * Had Congress intended such result to follow from the alienation of an interest after entry in good faith, it would have so declared in the law (citing *Myers* v. *Craft*, 13 Wall. 281, 20 L. Ed. 562).

To sustain the contentions of the plaintiff in error would be to incorporate, by judicial decision, a prohibition against the alienation of an interest in the lands, not found in the statute or required by the policy of the law upon the subject."

And so in the case at bar, by the act of Congress of September 24th, 1917 (Sec. 6) the Secretary of the Treasury is authorized to borrow

from time to time, on the credit of the United States "such sum or sums as in his judgment may be necessary, and to issue therefor, at such price or prices and upon such terms and conditions as he may determine, War Savings Certificates of the United States on which interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe." It also authorized the Secretary of the Treasury "under such regulations and upon such terms and conditions as he may prescribe issue or cause to be issued stamps to evidence payment for on account of such certificates."

But it does not expressly authorize the Secretary of the Treasury to restrain the alienation of either certificates or stamps. The power to restrain alienation is not to be presumed or implied. The right of alienation is inherent as an incident to or an attribute to the ownership of the property (*Fletcher* v. *Peck,* 6 Cranch 87; *Bronson* v. *Bush,* 251 U. S. 182, 187). There is no question but that the stamp for which the government receives payment is property, and as such, is transferable at the will of the owner.

The terms and conditions which the Secretary of the Treasury was authorized to impose were only such terms and conditions as related to the mode and manner of payment, the form of the obligation, and as to date of maturity. The only restriction, if it can be called a restriction, authorized by the act is that which is expressly stated therein, namely, that it shall be unlawful for any one person to own and hold at any time War Savings Certificates of one series in an amount in excess of one thousand dollars.

Assume that the condition imposed by the Secretary of the Treasury that the War Savings Certificate is to be payable only to the owner and that it is not transferable is part of the contract, that alone would not prevent the lawful owner from transferring his right, title and interest therein. During the war and since the government encouraged private agencies to increase the sale of War Savings Stamps. Stamps without limit were delivered to them upon payment of par for the purpose of having the same sold to others, so that the right to transfer stamps was fully recognized. Peter B. Ballas and Ethel C. Hickox, who it is alleged in the

indictment were at one time the lawful owners of the Certificates, by the transfer of the same to the defendant, conferred upon him an implied, if not an express, power to sign their respective names to the certificates so as to enable the defendant as transferer to obtain payment thereon, and even if it be assumed that such authority is not to be implied from the mere transfer the defendant would have a right to compel his transferers to present the same for payment and to turn over to him the proceeds collected thereon.

Portuguese Am. Bank v. *Welles*, 242 U. S. 7;
Hobbs v. *McLean*, 117 U. S. 567;
Burck v. *Taylor*, 152 U. S. 632;
Hackett v. *Campbell*, 10 N. Y. App. Div. 523, affirmed 159 N. Y. 537;
Fortunato v. *Patten*, 147 N. Y. 277.

Judge Hough's reasoning that a right *ex-contractu* against the United States must necessarily be freely assignable is absolutely sound, notwithstanding the argument of the Attorney General to the contrary.

It is true that the Act of February 26th, 1853, Chap. 81, 10 Stat. 170 and Section 3477 U. S.

Revised Statutes, forbid the assignment of claims against the United States except upon compliance with certain formalities after warrant issued, but these statutes relate to unliquidated claims and the assignment is expressly prohibited by acts of Congress. Congress by these statutes intended to prevent bribery by the assignment of a share or interest in government contracts to government officials or employees for the purpose of obtaining a favorable adjustment of unliquidated claims.

Here, however, the Attorney General insists that a restraint of alienation is to be implied although not expressly provided for in the act itself.

Indeed, the condition imposed by the Secretary of the Treasury is absurd. The sale of War Savings Stamps is unrestricted—the person acquiring the same may affix them, if he so desires, or he may accumulate as many stamps as he may wish to accumulate and, at will, affix the same to cards and present the same for payment, and yet it is to be assumed that notwithstanding that right and power the owner may become guilty of a crime of counterfeiting

by detaching from said card one or more stamps and affix the same to another or different card. If the owner may do so without being guilty of the crime of counterfeiting, anyone acquiring the stamps from him may do so without being guilty of altering an obligation of the United States.

III.

The Court properly dismissed the indictment because it is defective in form, because of duplicity and for the reason that it is vague and indefinite.

The indictment does not inform the defendant whether the crime charged is based on the supposition that he was dealing in altered obligations of the United States and that he was in possession thereof with intent to pass the same as true and genuine, or whether the crime charged is the uttering of a forged or altered obligation by having possession of such document with intent to pass and sell the same as altered or counterfeit. The two acts are separate and distinct and con-

stitute different and distinct crimes. The indictment is therefore faulty.

Brewing Co. v. *U. S.*, 204 Fed. Rep. 17;
Ammerman v. *U. S.*, 216 Fed. Rep. 326.

An indictment under the counterfeiting statute must show (1) that the instrument was an obligation of the United States before its form was changed or altered; (2) that the alteration effected a change in the form of the obligation; (3) that the person altering or changing the form of the instrument knew it to be an obligation of the United States; (4) and when a person is charged with the possession of an altered obligation of the United States, it must also be alleged in the indictment and proven on the trial that the defendant knew it to be an altered obligation of the United States.

None of these facts are alleged in the indictment. The allegations contained in the indictment that an obligation of the United States was altered or that the defendant was in possession of an altered obligation of the United States are mere conclusions of law which are

not supported by the exhibits annexed to and forming part of the indictment, these exhibits show on the face thereof either that the instrument was not an obligation of the United States, and that if it was an obligation that it was not, in fact, altered.

In an indictment under the counterfeiting statute it is not sufficient to set forth the offense in the words of the statute unless those words of themselves fully, directly, expressly, and without uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished.

The offense at which the counterfeiting statute is aimed is similar to the common law offense of uttering a forged or counterfeit bill. In the case of counterfeiting, as in the case of uttering a forged or counterfeit bill, knowledge that the instrument is forged and counterfeit is essential to make it a crime; and an uttering, with intent to defraud, of an instrument, in fact counterfeit, but supposed by the defendant to be genuine, though within the words of the statute, would not be within its meaning and object. And therefore it is necessary, to charge

a crime, that the indictment allege that the defendant knew, of the instrument which he uttered, to be false, forged and counterfeit; otherwise the indictment does not charge a crime.

United States v. *Carll*, 105 U. S. 611;
United States v. *White*, 171 Fed. Rep. 777;
Dunbar v. *United States*, 156 U. S. 185, 193.

To charge the defendant with the commission of a crime under the statutes relating to counterfeiting when fraud is the gravamen of the indictment, it must also specify the acts constituting the fraud against the United States as distinguished from fraud perpetrated upon an individual. Therefore, unless the act of altering constitute fraud upon the United States, no crime is charged even if it be assumed that the alteration was intended to defraud an individual.

The argument presented by the government in support of the indictment for conspiracy in the case of *United States* v. *Janowitz*, No. 331, does not affect the instant case because here the defendant in error is the only defendant before

the bar and he is not charged with conspiracy to do anything in violation of any rule or regulation of any department. Here the question is whether or not he committed a crime under the counterfeiting statute and whether the obligation created by the affixation of the stamp to the card was altered by tearing that card or by detaching the stamp.

CONCLUSION.

The judgment of the District Court should therefore be affirmed.

Respectfully submitted,

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